

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI**

COMPLAINT NO. CC00600000056311

Bikramsingh Butola

..Complainant

Verses

Rajesh Surti

..Respondent

MahaRERA Regn. No. P51800003673

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: Adv. Gopal Krishna
appeared on behalf
of Complainant.

Respondent : Absent

**ORDER
(Dated 22.04.2019)**

1. The complainant who had booked a flat with the respondent/builder, seeks withdrawal from the project and refund of his amount with interest and compensation.
2. The complainant has alleged that he booked flat NO. 1404 in the B wing in the project of the respondent Raj Pantheon at Goregaon, Mumbai having area of 745 sq. ft. with open car parking, for a total consideration of Rs.1,01,10,000/- (Rupees one crore one lakh ten thousand only). The respondent issued Allotment Letter dated 11.07.2014 and accepted Rs.5.00 lakhs. From time to time the complainant paid Rs.36,12,809/-. Out of these, Rs.17 lakhs were paid in cash and Rs.19,12,809/- through 5 cheques. The respondent continued to make demands for

payment. But there was absolutely no progress at the site. The complainant has gathered information that the respondent has abandoned the project. After several meetings with authorised representative of the respondent, Mr. Rajesh Surti, the respondent agreed to cancel the allotment and refund money that was received. The settlement was arrived at on 27.09.2017 and the respondent agreed to refund Rs.35,41,255/- deducting Rs.71,554/- which were paid as Service Tax. However, respondent has stopped communicating with the complainant. The complainant therefore seeks recovery of Rs.36,12,809/- with compensation of Rs.20 lakhs.

3. The complaint came up before the Hon'ble Member on 22.11.2018 and came to be transferred to Adjudicating Officer. On 26.03.2019, the respondent was absent. Arguments for complainants were heard.
4. Following points arise for my determination. I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1. Whether the complainant is an allottee of respondent/promoter?	Negative
2. Has the respondent failed to deliver the possession of the flat to the complainant as per agreement?	Does not Survive
3. Is the complainant is entitled to the reliefs claimed?	Negative
4. What Order?	As per final Order.

REASONS

5. Point Nos. 1 to 3 – The complainant has alleged that he booked flat no. 1404 with the respondent on 11.07.2014 by paying a sum of Rs.5 lakhs. Further, Rs.17 lakhs were paid in cash including Rs.5

*W
22.11.19*

lakhs paid earlier. Rs.19,12,809/- were paid through 5 cheques dated 20.06.2014, 07.07.2014, 04.08.2015, 17.08.2015 and 12.11.2015. As there was no progress in the construction work and in fact as respondent had abandoned the project, the settlement was arrived at and respondent issued letter dated 27.09.2017 whereby respondent cancelled the booking made by the complainant and agreed to refund the amount received from the complainant in four instalments.

6. The complainant has placed copy of the letter dated 27.09.2017 on record. The letter of the respondent reads that on the basis of cancellation of flat as per mutual agreement, the respondent agreed to return advance payment in four instalments of Rs.10 lakhs in November, 2017, Rs.10 lakhs in December, 2017, Rs.10 lakhs in January, 2018 and Rs.5,41,255/- in February, 2018. The complainant has also asserted that Rs.71,554/- were paid towards Service Tax. The respondent agreed to refund the said amount after the flat is sold in open market. The complainant has placed on record copy of the legal notice dated 07.08.2018 issued to the respondent.
7. There is no dispute that the complainant had booked the flat with the respondent, where upon he become allottee of the promoter/respondent. However, as per the settlement dated 27.09.2017, on mutually agreed terms, the said booking was cancelled. Thus the agreement between the parties stood terminated. Thereafter, complainant cannot be termed as allottee.
8. Section 18 of The Real Estate (Regulation and Development) Act, 2016 provides for return of the amount and compensation, if the promotor fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of agreement for sale. Since the agreement between the parties

was already terminated, I cannot grant any relief u/s 18 of The Real Estate (Regulation and Development) Act, 2016. I therefore, answer point no.1 in the negative. Point no. 2 does not survive. Point No. 3 in negative and proceed to pass following Order.

ORDER

1. The complaint stands dismissed
2. No Order as to costs.

Mumbai

Date : 22.04.2019

MB 22-4-2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA